Supreme Court, U.S.
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No. 97-1921

In The

Supreme Court of the United States

October Term, 1997

JOSE A. CUEVAS-SEGARRA, AMNERIS MARTINEZ,
The Conjugal Partnership Constituted By Them,
ANTONIO R. CONCEPCION, AGNA I. MORALES,
And The Conjugal Partnership Constituted By Them,

Petitioners,

v.

MARIA LUISA CONTRERAS,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW BY PETITIONER

1. Whether the "catch all" statement of Section 105(a) of the Bankruptcy Code, which provides that bankruptcy courts may issue any order, process, or judgment that is necessary to carry out the provisions of the Code can be utilized to render superfluous the two year statute of limitations of Section 549(d) of that same law.

2. Whether the Fifth Amendment due process requirements mandate, at a minimum, a meaningful opportunity to be heard prior to an adjudication affecting property rights.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Maria Luisa Contreras, Respondent, authorized by the United States Bankruptcy Court to act as her own attorney, respectfully opposes the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 134 F.3d 458 (1st Cir. 1998). The order of the Court of Appeals denying Petitioners' request for rehearing is unreported. The order of the United States District Court for the District of Puerto Rico, affirming the United States Bankruptcy Court for the District of Puerto Rico's Memorandum Opinion and Order, as amended, is also unreported. Both the original Memorandum Opinion and Order of the United States Bankruptcy Court for the District of Puerto Rico and the subsequent Decision and Order, amending the prior Memorandum Opinion and Order are both unreported. All the above are reproduced in Appendix A-1 to A-36 in the Petition for Writ of Certiorari filed by Petitioners.

JURISDICTION

The Court of Appeals entered its judgment on January 23, 1998. Petitioners' request for rehearing was denied by the Court of Appeals for the First Circuit on February

24, 1998. The jurisdiction of this Court was invoked by Petitioners pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States, Amendment V:

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

All statutory provisions referred to in this brief are reproduced in the Appendix, and identified in the text as (APP. *infra*, B-1 through B-10).

STATEMENT OF THE CASE

Respondent, Maria Luisa Contreras, was appointed successor trustee in the bankruptcy case of Chapter 7 Debtors, Jose Mendez and Alejandra Becerra on February 2, 1994. Four months later, on June 2, 1994 she filed a complaint against various defendants, including Petitioners. She was authorized to act as her own attorney by the United States Bankruptcy Court for the District of Puerto Rico.

Upon her appointment, she reviewed the record and was able to ascertain that various sections of the Bankruptcy Code and Rules had not been adhered to and that valid orders of the Bankruptcy Court had been disregarded. Prior trustee informed her, that although it did

not appear in the official file, to the best of his knowledge, a liability suit, filed in the Puerto Rico Superior Court was property of the bankruptcy estate and that it had been settled unbeknownst to the United States Bankruptcy Court. It appeared that this had been done contrary to the express orders of the Bankruptcy Court and that the funds received from two insurance companies had been disposed of without regard to the estate, the trustee or the Court. A review of the Puerto Rico Superior Court file showed that two attorneys had represented the debtor in this law suit, without an appointment from the United States Bankruptcy Court as required by 11 U.S.C. § 327, Bankruptcy Rule 2014 (APP. *infra*, B-1, B-9). Furthermore, when these attorneys entered into a settlement agreement, they executed the same in contravention of a specific order of the Bankruptcy Court that had instructed that any settlement had to include the trustee and be brought for approval to the Bankruptcy Court. The record further showed that the attorneys in question received attorney's fees without Bankruptcy Court approval, in direct violation of Section 330, Bankruptcy Rule 2016 (APP. *infra*, B-2, B-9).

In view of the above, Successor Trustee filed suit to recuperate property of the estate, under Section 542(a) of the Bankruptcy Code. On July 20, 1995, the United States Bankruptcy Court, Hon. Gerardo Carlo, issued a Memorandum Opinion granting a Motion for Summary Judgment filed by Successor Trustee. (Petitioners' App. A-14). An appeal was filed and the United States District Court, Hon. Salvador Casellas, affirmed. (Petitioners' App. A-8). Upon a second appeal, on January 23, 1998 the Court of Appeals for the First Circuit affirmed the courts below,

(Petitioners' App. A-1), decision of which Petitioner is now requesting review.

All three decisions rendered in this case by the three courts that have considered the matter have been decided based on Sections 542(a), 362(a)(3), and 105(a) of the Bankruptcy Code. (APP. *infra*, B-4, B-3, and B-1). None of these sections contain a statute of limitations, except to state that a proceeding must be filed before the case is closed. Petitioners insist that the only cause of action available to a trustee, in a situation like the one at bar, is Section 549 (APP. *infra*, B-6) and that the statute of limitations had already expired upon successor trustee's appointment. Trustee did not file under this section because it was obvious to her that her rights thereunder had expired. Instead she filed pursuant to Section 542(a). The Bankruptcy Judge in his opinion and order stated that not only was Section 542 available to the Trustee but that she had causes of action under Sections 362 and 105. The District Court affirmed and agreed with the lower court, stating that all three avenues of recovery were available to the Trustee, Sections 542(a), 362 and 105(a). The Court of Appeals for the First Circuit did not disagree with the District Court and affirmed without reversing any portion of the lower court's decision. The Court of Appeals reviewed the different grounds upon which the District Court had decided and simply stated that "[W]e need look no further than § 105(a) to affirm the courts' decisions". Petitioners interpret that the Court of Appeals affirmed based solely on Section 105(a) and that in so doing utilized an equity provision to render superfluous the two year statute of limitations contained in Section 549. Petitioners fail to state that all three courts

that considered this matter found that Section 105 was but one of several options available to the Trustee to pursue the cause of action and that the decision of the Court of Appeals does not in any way render superfluous the statute of limitations contained in Section 549 in cases where such a section applies.

STATEMENT OF FACTS

1. **June 24, 1981** – Jose Mendez (MENDEZ) and Alejandra Becerra (BECERRA) filed a medical malpractice suit against Dr. Karl Horn and Dr. Julio Westerband and their respective insurance companies in the Superior Court of Puerto Rico, San Juan Section.

2. **October 6, 1982** – MENDEZ and BECERRA filed a joint Chapter 7 Bankruptcy petition. Shortly thereafter Johnny Elias Rivera, Esq. was appointed trustee. MENDEZ and BECERRA failed to list various assets in their original schedules, including, but not limited to, the existence of the before mentioned malpractice suit

3. **March 30, 1983** – At a hearing, MENDEZ and BECERRA first revealed the existence of the malpractice suit to their trustee and creditors.

4. **July 6, 1983** – Three months later, MENDEZ and BECERRA filed *Informative Motion Requesting Amended Schedule* in order to include the malpractice suit as an asset of the estate.

5. **December 6, 1983** – Five months after the above stated motion, MENDEZ and BECERRA filed a motion requesting the appointment of Wilfredo A. Geigel, Esq. as

Special Counsel to represent them in the malpractice suit pending before the Superior Court. In said motion, MENDEZ and BECERRA again admit that the cause of action here in controversy was property of the estate. They stated in the motion that " . . . said case is subject to the administration of the estate of the debtor by this Court".

6. **February 14, 1984** – Honorable Antonio I. Hernandez Rodriguez, United States Bankruptcy Judge, held a hearing to consider the application for appointment of special counsel. Both the minutes of the hearing and a written order issued thereafter, stated: " . . . any agreement contemplated in the state court must also be executed by trustee on behalf of the estate and must be approved by this Court".

7. **July 23, 1986** – Wilfredo A. Geigel, Esq., Special Counsel appointed by the Bankruptcy Court to represent debtors in the malpractice suit, resigned. Debtors retained Antonio Concepcion, Esq. and Jose A. Cuevas Segarra, Esq., Petitioners herein, without requesting approval of the Bankruptcy Court. Two years would transpire before either would request such appointment.

8. **July 30, 1986** – Johnny Elias Rivera, Esq.'s appointment as trustee is terminated and Héctor L. Urrutia, Esq. (URRUTIA) is appointed successor trustee.

9. **August 26, 1988** – on the eve of reaching a settlement in the Superior Court, Antonio Concepcion, Esq., (CONCEPCION) and Jose A. Cuevas-Segarra, Esq. (CUEVAS) filed *Motion for Designation of Special Counsel* before the Bankruptcy Court, aware that in order to settle the malpractice suit and collect fees, they required court appointment and approval.

10. **September 9, 1988** – Hon. Enrique S. Lamoutte, United States Bankruptcy Judge, denied without prejudice, the motion for appointment filed by CONCEPCION and CUEVAS because the same did not comply with Bankruptcy Rule 2014 (APP. *infra*, B-9). A quick perusal of this Rule by the applicants, both seasoned attorneys, would have indicated to them that they had to include a Verified Statement with their application attesting to their disinterestedness. No amended application or supplemental papers were filed to cure the lack of compliance with Rule 2014.

11. **October 25, 1988** – Instead of curing the defect in their application, CONCEPCION and CUEVAS wrote the trustee URRUTIA, asking that he provide them with the documents they were missing so they might obtain Court appointment. Various letters were sent by them to URRUTIA.

12. **January 30, 1989** – CUEVAS wrote URRUTIA indicating that MENDEZ, the debtor, had delivered a document to him allegedly issued by the Bankruptcy Court which he said released him (MENDEZ) from further responsibility and closed the case. They went on to surmise that this was rendered because MENDEZ and BECERRA had finished paying a non-existent plan. This case was always a Chapter 7 and under the provisions of the same, debtors do not file or make payments under a plan. No such document has ever been produced or exists in the Bankruptcy file.

13. **January 31, 1989** – URRUTIA scribbled a handwritten note on the bottom of the letter described above which said that if such an order existed, that is, one

closing the case, that then the Court would no longer have jurisdiction. He suggested that CUEVAS go to the United States Bankruptcy Court clerk's office and verify the information.

If CUEVAS and CONCEPCION would have taken URRUTIA's advise, they would have found out that the document that MENDEZ alluded to did not exist and that the bankruptcy case was open. URRUTIA's lack of knowledge of the document should have alerted CUEVAS and CONCEPCION that the case was still open, for as trustee he would have had to have been notified if the case had been closed.

14. **February 8, 1989** – A stipulation was executed, settling the Superior Court case. CUEVAS signed on behalf of the debtors. The trustee was not a party to the stipulation, in direct violation of the order of March 8, 1984 issued by the Honorable Antonio I. Hernandez-Rodriguez, United States Bankruptcy Judge. The Stipulation was approved by the Superior Court. This order was not brought to the Bankruptcy Court nor was the Superior Court informed that this was a requirement.

15. **March 31, 1989** – MENDEZ and BECERRA received payment pursuant to the stipulation from two insurance companies. CUEVAS and CONCEPCION were paid the percentage they had been promised by MENDEZ and BECERRA, that is $27,456, ignoring the tenets of Section 330 of the Bankruptcy Code and Bankruptcy Rule 2016.

16. **September 16, 1993** – URRUTIA resigned as trustee and Donald Walton was appointed.

17. **February 2, 1994** – Maria Luisa Contreras, Respondent herein, was appointed successor trustee.

REASONS WHY PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

I. THE FIRST ISSUE PRESENTED FOR REVIEW DOES NOT MEET THE CRITERIA ESTABLISHED IN UNITED STATES SUPREME COURT RULE 10 WHICH PROVIDES GUIDANCE AS TO WHEN THE SUPREME COURT MAY PROPERLY EXERCISE DISCRETION TO GRANT A PETITION FOR WRIT OF CERTIORARI.

Rule 10(a) of the United States Supreme Court Rules provides guidance as to the matters on which the Court will ordinarily grant a writ of certiorari. In general Rule 10 states that a petition for certiorari will only be granted for compelling reasons and rarely when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. Specifically, when the review is requested from a decision entered by a court of appeals, as in the present case, Rule 10(a) further indicates that certiorari may ordinarily be granted only if the court of appeals has rendered a decision in conflict with the decisions of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower

court, as to call for exercise of the Supreme Court's supervisory power. The first issue presented in this case, does not even remotely approach this threshold.

Petitioners do not punctuate what compelling reason exists that should move this court to grant review of the first issue presented nor does Petitioners allege that there has been a conflict among courts of appeal on the issue, admitting that it is a matter of first impression. Nonetheless, Petitioners rely on the recent decision rendered by this Court, *Kawaauhau v. Geiger,* 118 S.Ct. 974 (1998) to support the contention that review should be granted. In this latter case, the Court clearly stated that it had granted certiorari in order to resolve a conflict among the Sixth, Eighth and Tenth Circuits on the interpretation of a specific section of the Bankruptcy Code.

Petitioners allege in the first sentence of the argument section of its brief, at page 8, that " . . . the Court of Appeals erroneously decided an important question of federal law *of first impression* relating to the administration of the federal bankruptcy system . . . " (emphasis ours). Petitioners are thus asserting that the Court of Appeals misapplied a properly stated rule of law, 11 U.S.C. § 105(a), to the facts of this case. This provision of the Bankruptcy Code has not changed to any great degree, since it was amended in 1986. Obviously the issue raised cannot be affecting the administration of the Bankruptcy System in any compelling fashion if this is a matter of first impression after close to twelve years of its enactment. At present the controversy is only one affecting the personal rights of the particular litigants in the present case. Should the issue ever arise again in the future, this Honorable Court can then consider the same

having the benefit of several lower court decisions, and with cumulating events providing a better perspective for decision. See, 16B Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction 2d* § 4004.1.

Ordinarily the Supreme Court exercises its discretion in granting certiorari on the assumption that it does not function as an ordinary appellate court concerned with achieving justice in individual cases. The general public importance of the issues, and the need to secure uniformity of federal law, must take precedence. As early as 1923, the Supreme Court in a decision by the Honorable Chief Justice Taft stated in *Layne & Bowler Corporation v. Western Well Works, Inc., et al.*, 261 U.S. 387, 392-393, that:

> . . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.

The only controversy that Petitioners are requesting that this Honorable Court settle are those between the parties, for there are no important public issues to be resolved in this case and no conflict of opinion among the circuit courts of appeals.

II. THE SECOND ISSUE PRESENTED IS NOT RIPE FOR JUDICIAL REVIEW SINCE NO RIGHTS HAVE BEEN ADJUDICATED AND NO PROPERTY RIGHTS AFFECTED BY THE ORDER OF THE COURT OF APPEALS.

This issue concerns instructions imparted by the Court of Appeals to the District Court, asking that the conduct of the Petitioners, both attorneys admitted to practice before the District Court for the District of Puerto Rico, be reviewed by said court to determine whether they should be subject to disciplinary procedures. Petitioners contend that the due process requirements of the Fifth Amendment to the Constitution of the United States mandate a meaningful opportunity to be heard prior to an adjudication affecting property rights and that Petitioners were denied such a remedy. This argument is without merit. No adjudication has been made, no property rights have been affected, making this allegation not ripe for review. The Court of Appeals imparted instructions to the District Court to review the conduct in question and determine whether disciplinary procedures are warranted. A possibility exists that once the District Court reviews the conduct in question, it could make a finding that no cause exists to take the procedure further. If on the contrary, after undertaking its review, it recommends further action, then Local Rule 211(5) of the Local Rules of the District Court for the District of Puerto Rico (APP. *infra*, B-8) provides an attorney subject to disciplinary procedures with all due process protections, to adequately defend his or her conduct. Local Rule 211 affords an attorney the right to notice, hearing and the right to counsel, before the District Court

can determine that disciplinary measures are called for. In the eventuality that such a determination is reached, then the issue presented therein would be ripe for appeal or review. An issue may not be ripe for review if it involves uncertain or contingent future events that may happen as anticipated or not at all.

Petitioners further argue that in order for their rights to be protected, the matter of their conduct should be considered by the Bankruptcy Court in a trial setting. The Bankruptcy Court is a unit of the District Court, pursuant to 28 U.S.C. § 151 (APP. *infra*, B-6) for the particular district. It is the District Court that has the inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it and the Court that promulgates the Rules of Disciplinary Enforcement contained within Rule 211 of the Local Rules of the District Court. The Bankruptcy Court is not empowered to make any determination in this matter and would only refer the matter to the District Court.

In conclusion, the second issue presented is not ripe for review, for up to the present no property rights have been adversely affected and no injury has been suffered. Local District Court Rule 211(5)(A) provides for the investigative procedure suggested by the Court of Appeals, and this rule furnishes Petitioners with adequate due process protection.

III. PETITIONERS' REQUEST FOR WRIT OF CERTIORARI CONTAINED PERCEIVED MISSTATEMENTS OF FACT AND LAW, REQUIRING RESPONDENT TO ADDRESS THE SAME PURSUANT TO UNITED STATES SUPREME COURT RULE 15(2).

Supreme Court Rule 15(2) admonishes that Counsel have an obligation to point out in the brief in opposition to the petition for certiorari any perceived misstatements of fact or law contained in the petition that bear on issues that properly would be before the Court if certiorari were granted. In compliance therewith, Respondent points out the following perceived misstatements and requests that the Court take note of the same when deciding whether to grant the writ of certiorari in this case:

A. On page 10, Paragraph 4 of the Petition for Writ of Certiorari, it states that Section 549 is the **sole** provision addressing the powers of a trustee to avoid or set aside post petition transfers of property of a bankruptcy estate, **including the recovery of compensation of professionals who have acted without court approval on behalf of an estate**. Petitioners then cite two cases that allegedly support this statement but that in reality do not decide this issue.

The first of the two cases, *In re Rose*, 25 B.R. 744 (E.D. Mo.1982), does not refer to recovery of compensation of professionals but instead to the attempts by a trustee to avoid a pre-judgment garnishment on proceeds from the sale of real property held by a third party but belonging to certain bankruptcy debtors. The issue in controversy arises because the pre-judgment garnishment had been instituted prior to the date of the bankruptcy petition but

the transfer of money pursuant to the garnishment had taken place after the date of the bankruptcy petition. The controversy arises as to whether this was a transfer to be avoided under Section 547 (preference actions limited to pre-petition transfers in favor of a creditor) or under Section 549 (unauthorized post petition transfers).

The above is a controversy totally different from the one before this Honorable Court and has nothing to do with the statement of whether Section 549 is the **sole** provision permitting a trustee to recuperate property of the estate transferred post petition. Section 547 has never been an option in the present case because it refers only to pre-petition transfers in favor of creditors. Moreover, Respondent has never denied that Section 549 is a mechanism to avoid unauthorized post petition transfers. The argument purported by Respondent and adopted by the three Courts that have considered the issue is that it is not the **sole** vehicle by which to avoid the transfer in the present case. Neither does *In re Rose, supra,* state that Section 549 is the only section by which the post petition transfer can be avoided, principally because this was not an issue in the case. The issue there was whether the transfer, for purposes of avoidance, had occurred before or after the filing of the petition in Bankruptcy.

The second case cited in furtherance of Petitioners' statement, that Section 549 is the **sole** provision addressing the powers of a trustee to recover compensation received by unauthorized professionals, also falls short of deciding this issue. The case, *In re Dola Intern. Corp.*, 88 B.R. 950 (Bankr. D. Minn. 1988), refers to a complaint filed to recuperate pre-petition payments under Section 547 and post petition payments under Section 549 made to

certain management consultants, professionals under Section 327(a).

The court in this case authorizes the avoidance of certain transfers as preferences (Section 547) and others as unauthorized post petition transfers (Section 549) but at no time does it state, nor is this matter in issue, that Section 549 is the **sole** provision dealing with a trustee's recuperating property transferred post petition. Petitioners have been unable to cite a case that supports their theory that neither Section 542(a), 362, or 105(a) are available for this purpose under facts similar to those in the case now before this Honorable Court.

B. A second misstatement can be found on Page 18 of Petitioners' request for writ of certiorari. It states that:

> The Court of Appeals failed to consider Cuevas' and Concepcion's reliance on Urrutia's, a lawyer, inaction in carrying (sic) his duties as trustee and in reference to their appointment to act as special counsel for Debtors' estate, which conveyed to Cuevas and Concepcion an understanding that their actions, in settling the medical malpractice case and receiving compensation were proper.

The Decision of the Court of Appeals shows that this court arrived at a very distinct and contradictory conclusion in this respect and that it did consider the matter. The Court stated specifically:

> Cuevas and Concepcion protest that much of the blame in this case belongs to Hector L. Urrutia, the original trustee in this case and a predecessor to Contreras. Cuevas and Concepcion allegedly wrote numerous letters to Urrutia

requesting that he submit to the bankruptcy court an application for their employment, which would have paved the way for their representation. According to the authors, these letters received no response. Nevertheless, it is undisputed that Urrutia ultimately advised Cuevas and Concepcion to check with the bankruptcy court before taking any action regarding the malpractice action. They did not do so.

CONCLUSION

For the reasons stated in this Opposition, Respondent very respectfully requests that the petition requesting writ of certiorari be denied.

Respectfully submitted,

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RESPONDENT'S APPENDIX

REPRODUCTION OF STATUTES AND RULES CITED IN BRIEF

11 U.S.C. § 105 – Power of Court:

(a) The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) . . . .

(c) . . . .

(d) . . . .

11 U.S.C. § 327(e) – Employment of Professional Persons.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 330(a) – Compensation of officers.

(a)(1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 –

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

11 U.S.C. § 362(a) – Automatic stay.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operated as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this

title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the set off of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

11 U.S.C. § 541(a) – Property of the Estate.

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interest of the debtor in property as of the commencement of the case.

(2) . . . .

(3) . . . .

(4) . . . .

(5) . . . .

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

11 U.S.C. § 542(a) – Turnover of Property to the Estate.

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 547 – Preferences

(a) . . . .

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property –

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made –

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of the transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if:

(A) the case were under a chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provision of this title.

(c) . . . .

(d) . . . .

(e) . . . .

(f) . . . .

(g) . . . .

11 U.S.C. § 549(a) – Post-petition Transactions.

(a) Except as provided in subsections (b) or (c) of this section, the trustee may avoid a transfer of property of the estate –

(1) made after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

28 U.S.C. § 151 – Designation of Bankruptcy Courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

United States Supreme Court Rule 10 – Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari

will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) . . . .

(c) . . . .

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

United States Supreme Court Rule 15(2)

A brief in opposition should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33. In addition to presenting arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any

perceived misstatements made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

United States District Court – Local Rule 211(5):

(5) Disciplinary Proceedings

(A) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court, shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge shall refer the matter for investigation and the prosecution of a formal disciplinary proceedings or such other recommendation as may be appropriate.

(B) If after investigation, the Court determines that disciplinary proceedings are warranted, it shall issue an order requiring the respondent-attorney to show cause why disciplinary action should not be taken, which order shall be served at the address registered with the Clerk of the Court.

(C) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard, the Court shall set the matter for prompt hearing before one or more Judges of the Court or such other person or persons as the Court may designate.

Bankruptcy Rule 2014(a) – EMPLOYMENT OF PROFESSIONAL PERSONS

(a) *Application for and Order of Employment.* An order approving the employment of attorneys, accountants, appraiser, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States trustee, or any persons employed in the office of the United States trustee.

Bankruptcy Rule 2016(a) – COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES

(a) *Application for Compensation or Reimbursement.* An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the

estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.